



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.12.2021**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.1729 of 2018

and

W.M.P. (MD)No.1842 of 2018

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V.Ramaraj

...Petitioner

/Vs./

1.The Registrar of Cooperative Societies (Housing),
493, Tamil Nadu Housing Society Premises,
Nandhanam, Chennai - 600 035.

2.The Deputy Registrar of Cooperative Societies (Housing),
Tirunelveli, Tirunelveli District.

3.The President,
O.2053, Gandhinagar Cooperative Housing Society,
1/21D, Gandhi Nagar, Tirunelveli - 8.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the impugned order of suspension passed by the 2nd respondent under section 76 of the Tamil Nadu Cooperative Societies Act, under Na.Ka.No. 52/2016/A (1), dated 24.01.2018 and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman

For R1 & R2 : Mr.A.K.Manikkam

Special Government Pleader

For R3 : No appearance

ORDER

The petitioner has challenged an order of suspension dated 24.01.2018, passed by the Deputy Registrar of Cooperative Societies (Housing)/R2. The petitioner had been employed as Secretary of Gandhinagar Cooperative Housing Society/R3.

2.Pursuant to an inspection under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 (in short 'Act'), proceedings were initiated in contemplation of suspension of the petitioner for certain allegations relating to non-maintenance of ledgers and accounts, receipts and bills concerning loans extended to the members of the society and alleged misappropriation in that regard.

3.The petitioner had challenged the notice by way of writ petition in W.P.(MD)No.11007 of 2016 seeking a direction to R2 to

<https://hcservices.ecourts.gov.in/hcservices/>



grant two months' time for production of all relevant documents. That writ petition came to be disposed on 22.06.2016, this Court sustaining the notice dated 16.06.2016 initiating disciplinary action, but extending the time by six weeks to enable the petitioner to produce the relevant documents.

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4. Thereafter, enquiry was conducted culminating in the impugned order dated 24.01.2018 suspending the petitioner in terms of Section 76 of the Act. It is relevant to note that no charge memo has been issued till date and the disciplinary proceedings are yet to commence.

5. The impugned order of suspension has been challenged by the petitioner mainly on the ground that it has been passed by an authority who lacks competence in that regard. The conferment of powers to certain officers as Registrars under the Act is dealt with G.O.Ms.No.31, H&U, dated 08.01.1990.

6. Therein, the Joint Registrar of Cooperative Societies (Inspection Cell) has been delegated the powers that vest with Registrar to render various acts including specifically powers under Section 76 of the Act, that provides for suspension of a paid officer or servant of the Society.

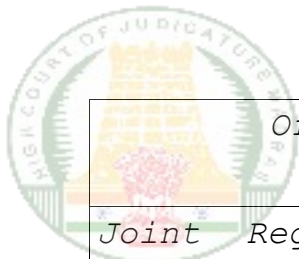
7. The Deputy Registrar of Cooperative Societies (Housing) has been conferred with various powers under the Act, specifically barring the power set out under various acts, specifically Section 76 of the Act.

8. The relevant portion of the GO is extracted below:

"Conferment of powers to certain Officers as Registrars under Tamil Nadu Co-operative Societies Act.

[G.O. Ms. No.31, H & U, dated 8th January 1990]

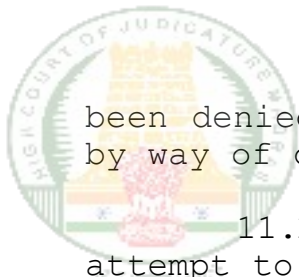
No. II (2)/HOU/402/90.- In exercise of the powers conferred by section 3 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and in supersession of all previous order of the subject issued under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) the Governor of Tamil Nadu hereby confers on the officers specified in column (1) of the table below, the powers of the Registrar under the Tamil Nadu Act 30 of 1983 specified in the corresponding entries in column (2) thereof.-



Officers (1)	Powers (2)
Joint Registrar of Co-operative Societies (Inspection cell)	In respect of any registered society, all the powers of a Registrar under the said Act, except those referred to in sections 14, 33 (4), 75, 91, to 136, 153 and 181; and ii) In respect of any apex society all the powers of the Registrar under the said Act, except those referred to in section 12, 14, 18, 32 (2) (i) (a), 33(4), 33(6), 33(12), 35, 36, 66, 68, 69, 75, 76, 77, 88, 89, 91 to 136, 137(1), 140, 142, 152 (2) (a), 153, 164, 178 and 181.
Deputy Registrar of Co-operative Societies (Housing)	i) In respect of any registered society, all the powers of a Registrar under the said Act, except those referred in Sections 12, 14, 18, 33(4), 33(7), 35, 36, 68, 69, 75, 76, 88, 91 to 136, 137(1). 152 (2) (a), 153, 173, 178 and 181; ii) In respect of any apex society, all the powers of a Registrar under the said Act, except those referred to in sections 12, 14, 18, 32(2) (i) (a), 33(4), 33(6), 33(7), 33(12), 35, 36, 66, 68, 69, 75, 76, 77, 78, 89, 91 to 136, 137(1), 152(2) (a), 153, 164, 166, 173, 178 and 181; and iii) In respect of any society ordered to be wound up by the Deputy Registrar of Co-operative societies under section 137(2), all the powers of a Registrar under sections 140 and 142.

9. In this case, admittedly, the impugned order has been passed by the Deputy Registrar / R2, who has not been delegated such power, but has been expressly debarred from exercising the power of suspension under Section 76 of the Act.

10. Thus, while Joint Registrars have been vested with certain rights by way of a positive entitlement, the Deputy Registrars have



been denied certain rights by way of a negative directive, that is, by way of denial.

11.Mr.A.K.Manikkam, learned Special Government Pleader would attempt to save the day by referring to Rule 12(2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, which deals with the power vesting in an authority superior to the appointing authority, to impose penalty on members of state service and reads thus:

(2) Power of the higher authority of the appointing authority to impose penalties on members of State Services.- Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of Rule 8 on members of the State Services:

Provided that where the members of the State Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties mentioned in item (iii) in so far as it relates to withholding of promotion and items (iv), (vi), (vii) and (viii) in Rule 8 shall be imposed only by the Government or by such higher authority:

Provided further that where the State Government are the appointing authority for members holding the posts included in the State Services, the Heads of Departments concerned may impose any of the penalties specified in item (i) and item (iii) in so far as it relates to withholding of increments and items (v) and (ix) in Rule 8 on those members other than such members who are immediately below such Heads of Departments:

Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under Rule 17 (b) or issue show cause notice under Rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed up to the level of



completion of inquiry or after receipt of explanation to show cause notice, as the case may be:

Provided also that where the appointing authority or the authority administratively higher to the appointing authority have passed orders of suspension under Rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in Rule 8 on such members. (vide G.O.Ms.No.19, Personnel and Administrative Reforms (N) Department, dated 11.2.2008, wef. 11.2.2008).

12. His attempt is to say that notwithstanding that an authority may be designated competent to impose penalty, the appointing authority or any authority administratively superior to the appointing authority may also impose such penalty.

13.This Rule, if at all, would only fortify the submission of the petitioner, as the first principle reiterated therein is that, while an authority superior to a competent authority might well kick-start the proceedings in question, such proceedings must be concluded only as provided for specifically in the Rules.

14.For the aforesaid discussion, the impugned order fails as having been passed by an authority who lacks competence, and one specifically barred from dealing with the subject of suspension. This writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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3.The President,
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+1 CC to M/s.SPL GP (SR-39949[F] dated 22/12/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-39824[F] dated 21/12/2021)

W.P. (MD)No.1729 of 2018
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